

the food package to determine the total amount of food to be provided.

(B) Divide the total amount of food provided by the container size issued by the State agency (e.g., ounces) to determine the total number of food containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

(i) *Plans for substitutions.* (1) The State agency may submit to FNS a plan for substitution of food(s) acceptable for use in the Program to allow for different cultural eating patterns. The plan shall provide the State agency's justification, including a specific explanation of the cultural eating pattern and other information necessary for FNS to evaluate the plan as specified in paragraph (i)(2) of this section.

(2) FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria:

(i) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.

(ii) The proposed substitute food must be widely available to participants in the areas where the substitute is intended to be used.

(iii) The cost of the substitute food must be equivalent to or less than the cost of the food it is intended to replace.

(3) FNS will make a determination on the proposed plan based on the evaluation criteria specified in paragraph (i)(2) of this section, as appropriate. The State agency shall substitute foods only after receiving the written approval of FNS.

[50 FR 6121, Feb. 13, 1985 as amended at 73 FR 11312, Mar. 3, 2008; 74 FR 48845, Sept. 25, 2009; 74 FR 69245, Dec. 31, 2009]

**§ 246.11 Nutrition education.**

(a) *General.* (1) Nutrition education including breastfeeding promotion and support, shall be considered a benefit of the Program, and shall be made available at no cost to the participant. Nutrition education including

breastfeeding promotion and support, shall be designed to be easily understood by participants, and it shall bear a practical relationship to participant nutritional needs, household situations, and cultural preferences including information on how to select food for themselves and their families. Nutrition education including breastfeeding promotion and support, shall be thoroughly integrated into participant health care plans, the delivery of supplemental foods, and other Program operations.

(2) The State agency shall ensure that nutrition education, including breastfeeding promotion and support, as appropriate, is made available to all participants. Nutrition education may be provided through the local agencies directly, or through arrangements made with other agencies. At the time of certification, the local agency shall stress the positive, long-term benefits of nutrition education and encourage the participant to attend and participate in nutrition education activities. However, individual participants shall not be denied supplemental foods for failure to attend or participate in nutrition education activities.

(3) As an integral part of nutrition education, the State agency shall ensure that local agencies provide drug and other harmful substance abuse information to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in the program. Drug and other harmful substance abuse information may also be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the Program.

(b) *Goals.* Nutrition education including breastfeeding promotion and support, shall be designed to achieve the following two broad goals:

(1) Emphasize the relationship between nutrition, physical activity and health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age, and raise awareness about the dangers of using drugs and other harmful

## Food and Nutrition Service, USDA

## § 246.11

substances during pregnancy and while breastfeeding.

(2) Assist the individual who is at nutritional risk in improving health status and achieving a positive change in dietary and physical activity habits, and in the prevention of nutrition-related problems through optimal use of the supplemental foods and other nutritious foods. This is to be taught in the context of the ethnic, cultural and geographic preferences of the participants and with consideration for educational and environmental limitations experienced by the participants.

(c) *State agency responsibilities.* The State agency shall perform the following activities in carrying out nutrition education responsibilities, including breastfeeding promotion and support,:

(1) Develop and coordinate the nutrition education component of Program operations with consideration of local agency plans, needs and available nutrition education resources.

(2) Provide in-service training and technical assistance for professional and para-professional personnel involved in providing nutrition education to participants at local agencies. The State agency shall also provide training on the promotion and management of breastfeeding to staff at local agencies who will provide information and assistance on this subject to participants.

(3) Identify or develop resources and educational materials for use in local agencies, including breastfeeding promotion and instruction materials, taking reasonable steps to include materials in languages other than English in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population and, where possible, the reading level of participants.

(4) Develop and implement procedures to ensure that nutrition education is offered to all adult participants and to parents and guardians of infant or child participants, as well as child participants, whenever possible.

(5) Monitor local agency activities to ensure compliance with provisions set

forth in paragraphs (c)(7), (d), and (e) of this section.

(6) Establish standards for participant contacts that ensure adequate nutrition education in accordance with paragraph (e) of this section.

(7) Establish standards for breastfeeding promotion and support which include, at a minimum, the following:

(i) A policy that creates a positive clinic environment which endorses breastfeeding as the preferred method of infant feeding;

(ii) A requirement that each local agency designate a staff person to coordinate breastfeeding promotion and support activities;

(iii) A requirement that each local agency incorporate task-appropriate breastfeeding promotion and support training into orientation programs for new staff involved in direct contact with WIC clients; and

(iv) A plan to ensure that women have access to breastfeeding promotion and support activities during the prenatal and postpartum periods.

(8) Determine if local agencies or clinics can share nutrition educational materials with institutions participating in the Child and Adult Care Food Program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) at no cost to that program, if a written materials sharing agreement exists between the relevant agencies.

(d) *Local agency responsibilities.* Local agencies shall perform the following activities in carrying out their nutrition education responsibilities, including breastfeeding promotion and support,:

(1) Make nutrition education, including breastfeeding promotion and support, available or enter into an agreement with another agency to make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and whenever possible and appropriate, to child participants. Nutrition education may be provided through the use of individual or group sessions. Educational materials designed for Program participants may be utilized to provide education to pregnant, postpartum, and breastfeeding women

## § 246.12

## 7 CFR Ch. II (1–12 Edition)

and to parents or caretakers of infants and children participating in local agency services other than the program.

(2) Develop an annual local agency nutrition education plan, including breastfeeding promotion and support, consistent with the State agency's nutrition education component of Program operations and in accordance with this part and FNS guidelines. The local agency shall submit its nutrition education plan to the State agency by a date specified by the State agency.

(e) *Participant contacts.* (1) The nutrition education including breastfeeding promotion and support, contacts shall be made available through individual or group sessions which are appropriate to the individual participant's nutritional needs. All pregnant participants shall be encouraged to breastfeed unless contraindicated for health reasons.

(2) During each six-month certification period, at least two nutrition contacts shall be made available to all adult participants and the parents or caretakers of infant and child participants, and wherever possible, the child participants themselves.

(3) Nutrition education contacts shall be made available at a quarterly rate to parents or caretakers of infant and child participants certified for a period in excess of six months. Nutrition education contacts shall be scheduled on a periodic basis by the local agency, but such contacts do not necessarily need to take place in each quarter of the certification period.

(4) The local agency shall document in each participant's certification file that nutrition education has been given to the participant in accordance with State agency standards, except that the second or any subsequent nutrition education contact during a certification period that is provided to a participant in a group setting may be documented in a masterfile. Should a participant miss a nutrition education appointment, the local agency shall, for purposes of monitoring and further education efforts, document this fact in the participant's file, or, at the local agency's discretion, in the case of a second or subsequent missed contact where the nutrition education was of-

fered in a group setting, document this fact in a master file.

(5) An individual care plan shall be provided for a participant based on the need for such plan as determined by the competent professional authority, except that any participant, parent, or caretaker shall receive such plan upon request.

(6) Contacts shall be designed to meet different cultural and language needs of Program participants.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 58 FR 11507, Feb. 26, 1993; 59 FR 11503, Mar. 11, 1994; 65 FR 53528, Sept. 5, 2000; 71 FR 56731, Sept. 27, 2006; 73 FR 11312, Mar. 3, 2008; 76 FR 59889, Sept. 28, 2011]

### Subpart E—State Agency Provisions

#### § 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for food delivery systems. In recognition of emergent electronic benefits transfer (EBT) technology, FNS may, on a case-by-case basis, modify regulatory provisions to the extent FNS determines the particular EBT system provides adequate safeguards that serve the purpose of the provisions being modified.

(1) *Management.* The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction. The State agency may permit only authorized vendors and farmers, home food delivery contractors, and direct distribution sites to accept food instruments and cash-value vouchers.

(2) *Design.* The State agency must design all food delivery systems to be used by its local agencies.

(3) *FNS oversight.* FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) *Part 3016.* All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems must conform to the requirements of part 3016 of this title.

(b) *Uniform food delivery systems.* The State agency may operate up to three